THE HONL'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20763 OF 2005

Dated: 08th December, 2005.

Between:

1. Jai Bharat Co-operative Housing Society Ltd.
TAB No.383, rep. by its Secretary, K.E.N. Kumar,
Office at Premises No.6-5-230/15, Gandhi Nagar,
Secunderabad and 2 others. … Petitioners

And

1.A.P. State Wakf Board, rep. by its
Chief Executive Officer, Office at Haj House,
Opp: Public Gardens, Nampally, Hyderabad,
and 3 others. … Respondents

THE HONL'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20763 OF 2005

ORDER :

This writ petition is filed seeking a Writ of Mandamus declaring the action of the 1st respondent – Wakf Board in granting lease in favour of the 2nd respondent in respect of 2000 sq. yards of wakf land attached to Koh-c-Imam-c-Zamin-(RA) situated in Sy.No.18/1 of Tirumalaghery village, Rangareddy District vide proceedings dated 12-8-2005 as arbitrary and illegal.

The 1st petitioner, a Co-operative Housing Society claims to have purchased the land admeasuring Ac.9.11 guntas situated in Sy.Nos.18/1 & 18/2 of Tirumalaghery village under different sale deeds in the year 1981. It is stated that the said land was made into different plots as per the approved layout sanctioned by the competent authority and all the plots were sold in favour of 112 members under registered sale deeds. Pursuant thereto, the purchasers were put in possession of the respective plots and having constructed houses, they have been in possession and enjoyment of the same. According to the petitioners, the land to an extent of 2000 sq. yards in Sy.No.18/1 of Tirumalaghery village which was leased out by the 1st respondent –

Wakf Board in favour of the 2nd respondent under the impugned proceedings dated 12-8-2005 forms part of the abovesaid Ac.9.11 guntas of land purchased by the 1st petitioner society. It is claimed that the petitioners 2 and 3 have been in possession and enjoyment of the said 2000 sq. yards having purchased the same from the 1st petitioner society.

The petitioners contend that the claim of the 1st respondent – Wakf Board that the said land to an extent of 2000 sq.yards belongs to the institution Koh-c-Imam-c-Zamin-(RA) and it is a notified wakf is absolutely false and without any basis.

It is alleged that in the year 2001 an attempt was made by some unsocial elements to interfere with the possession of the petitioners 2 and 3 who are in occupation of the abovesaid 2000 sq. yards of land claiming that the said property belongs to the 1st respondent – Wakf Board. The petitioners were constrained to lodge a complaint before the Police. The 1st respondent having failed in its attempt to occupy the said land and structures thereon with a mala fide intention issued the impugned proceedings dated 12-8-2005 purported to be a lease in favour of the 2nd respondent and thereby trying to induct unsocial elements into the land in question. It is pleaded that, as a matter of fact, material worth about Rs.2 lakhs has been stored in the said land by the residents of the plots for the purpose of construction of a temple.

It is contended that since the 1st respondent has no right or title in respect of the said 2000 sq. yards of land much less possession, the lease granted under the impugned proceedings is illegal apart from being without jurisdiction and in violation of Section 56 of the Wakf Act, 1995 (for short, 'the Act').

It is to be noted that in respect of the very same land of 2000 sq.yards the 1st respondent earlier granted lease in favour of one Khumeer Pasha vide proceedings dated 12-8-1999 for a period of three years. However, the 1st respondent filed O.S.No.87 of 1999 on the file of the A.P. Wakf Tribunal, Hyderabad against the Jai Bharat Co-operative Housing Society Limited (the 1st petitioner in this writ petition)

alleging that the lessee – Khumeer Pasha was obstructed by the defendant society, and accordingly seeking a decree for perpetual injunction restraining the defendant society, its officials, agents and men from interfering with the possession and enjoyment of the plaintiff (Wakf Board) or its lessee. In the said suit, the 1st petitioner society (defendant therein) filed an application being I.A.No.377 of 1999 seeking dismissal of the suit on the ground that the Tribunal has no jurisdiction to try the suit. The jurisdiction of the Tribunal was challenged on the ground that there was no preliminary survey as required under Section 4 of the Wakf Act, 1995 and the property in question has not been published as wakf property in terms of Section 5 of the Act and that it has not also been registered under Section 36 of the Act. Hence, it was contended that the suit was barred under Section 87 of the Act. The Tribunal, having heard both the parties, by order dated 22-6-2000, dismissed I.A.No.377 of 1999. Aggrieved by the same, the petitioner society filed C.R.P.No.2707 of 2000 which was dismissed by this Court by order dated 8-8-2000 holding that all the disputes relating to wakf property have to be decided by the Tribunal. This Court also held that on a combined reading of Sections 7, 84 and 85 of the Wakf Act, 1995, it is clear that whenever there is a dispute with regard to certain property as to whether it is a wakf property or not, the only forum, which can decide it, is the Tribunal created under the Wakf Act, 1995.

That apart, the 1st respondent – Wakf Board filed another suit being O.S.No.128 of 1999 on the file of the Wakf Tribunal, Hyderabad seeking perpetual injunction in respect of 10 items of the property situated in Tirumalaghery village. The said property includes the land in Sy.No.18/1 and Sy.No.18/2 which is claimed to have been purchased by the 1st petitioner society who was made a party to the said suit as defendant No.2. Admittedly, both the abovesaid suits i.e., OS.No.87 of 1999 and O.S.No.128 of 1999 are still pending.

Having regard to the above admitted facts, the 1st respondent Wakf Board filed a counter-affidavit raising a preliminary objection as to the maintainability of the writ petition under Article 226 of the Constitution of India. In the counter-affidavit, it is also stated that the 1st petitioner society earlier filed W.P.No.22419 of 2000 seeking a declaration that the Tribunal has no jurisdiction to entertain O.S.No.87 of 1999 and

O.S.NO.128 of 1999, but the same was dismissed on 21-7-2004. It is further stated the period of lease granted vide proceedings dated 14-8-1999, expired on 13-8-2002. Thereafter the Board unanimously resolved to extend the lease in favour of the same lessee - khumeer Pasha for a further period of three years. The extended lease has also expired on 12-8-2005 and thereafter under the impugned proceedings the lease was granted in favour of the 2nd respondent and he was put in possession on 13-8-2005. It is contended that in view of the alternative remedy available under Section 83 of the Act, the writ petition is not maintainable and on that ground alone, it is liable to be dismissed in limini.

The 2nd respondent filed a separate counter-affidavit stating that in pursuance of the impugned proceedings dated 12-8-2005, an agreement of lease dated 20-09-2005 was executed in his favour and he was put in possession. It is also stated that the Wakf Board approved the plan of the function hall and issued No Objection Certificate in his favour and accordingly he has been proceeding with the construction of the function hall which is almost at the completion stage.

I have heard the learned Counsel for both the parties and perused the material on record.

From the pleadings of the respective parties and the material placed before this Court by the petitioners, it is not in dispute that the land in question i.e., 2000 sq.yards which is leased out by the 1st respondent in favour of the 2nd respondent under the impugned proceedings is the subject-matter of O.S.No.87 of 1999 and O.S.No.128 of 1999 pending on the file of the A.P. Wakf Tribunal, Hyderabad. It is also not in dispute that though the 1st petitioner challenged the jurisdiction of the Tribunal by filing an application (I.A.No.377 of 1999) in O.S.No.87 of 1999, the same was dismissed and the said order was confirmed by this Court in CRP.No.2707 of 2000. Admittedly, the said order has become final. That apart, W.P.No.22419 of 2000 filed by the 1st petitioner seeking a writ of prohibition declaring that the A.P. Wakf Tribunal has no jurisdiction to entertain and try O.S.No.87 of 1999, O.S.No.124 of 1999, O.S.No.128 of 1999 so far as the land alleged to have been purchased by it

was also dismissed by this Court by order dated 21-7-2004.

The learned Counsel for the petitioners vehemently contends that in the light of the voluminous material available on record, the claim of the Wakf Board that the property in question is a wakf property is absolutely incorrect and without any basis. The learned Counsel while placing reliance upon the Order of the Commissioner of Survey, Settlement and Land Records, Hyderabad, dated 21-11-1983 contends that the petitioners acquired absolute rights of ownership and title in respect of the land in question, and that they are continuing in possession. Since admittedly the Civil Suits are pending before the Tribunal, it is for the Tribunal to make the necessary enquiry and to record a finding as to the rival claims made by the parties, on appreciation of the evidence that may be adduced by them. Hence, the said issue does not deserve any adjudication by this Court. At any rate, in view of the efficacious alternative remedy available under Section 83 of the Act and particularly keeping in view the fact that the land in question is the subject-matter of the suits already pending before the Tribunal, I am of the opinion that the petitioners cannot maintain this writ petition under Article 226 of the Constitution of India.

However, the learned counsel for the petitioners vehemently contends that under Section 56 of the Wakf Act, a lease can be granted in respect of a property only when such properly is conclusively found to be wakf property. According to the learned Counsel, since as on today there is no declaration in favour of the Wakf Board that the property in question is wakf property, the impugned proceedings granting lease is in violation of Section 56 of the Act and therefore on that ground alone the impugned order is liable to be set aside.

The law is well settled that the Wakf Tribunal has exclusive jurisdiction to deal with the matters connected with wakfs. Even a dispute with regard to certain property as to whether it is wakf property or not has to be decided only by the Tribunal created under the Wakf Act *{ vide P.RAMA RAO v. HIGH COURT OF A.P. (2000 (1) ALT 210) }*. Hence, the contention of the petitioners is without any substance.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

However, this shall not preclude the petitioners to work out the appropriate remedy as available under law assailing the impugned proceedings, if they so choose.

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G. ROHINI, J.

Dt.08–12-2005.

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